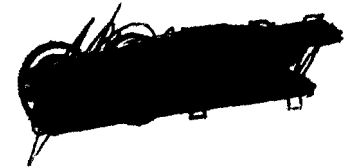


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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



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JAN 26 1998

In the Matter of)	
Implementation of Section 309(j))	MM Docket No. 97-234
of the Communications Act)	
-- Competitive Bidding for Commercial)	
Broadcast and Instructional Television)	
Fixed Service Licenses)	
Reexamination of the Policy)	GC Docket No. 92-52
Statement on Comparative)	
Broadcast Hearings)	
Proposals to Reform the Commission's)	GEN Docket No. 90-264
Comparative Hearing Process to)	
Expedite the Resolution of Cases)	

COMMENTS OF MUSIC MINISTRIES, INC. AND
SACRED HEART UNIVERSITY, INC.

Music Ministries, Inc. (MMI) and Sacred Heart University, Inc. (SHU), by their attorneys, and pursuant to Section 1.415 of the Commission's Rules, hereby submit these comments in response to the *Notice of Proposed Rule Making* ("Notice") in the above-referenced proceeding.¹ In the *Notice*, the Commission proposes to use competitive bidding procedures, *i.e.*, auctions, to resolve most mutually exclusive applications for broadcast licenses. These comments address a situation related to the preferences proposed for certain designated entities in the auctions.² Specifically, MMI and SHU urge the Commission to grant bidding preferences

¹ FCC 97-397 (rel. Nov. 26, 1997).

² See *Notice* at ¶¶ 83-97.

to noncommercial, educational (NCE) applicants who apply for commercial channels for NCE use in competition with commercial applicants.³

MMI is a NCE licensee located in Evansville, Indiana, holding licenses for various stations in Indiana and Illinois. In addition, MMI is one of seven applicants for a new FM channel in Bloomfield, Indiana.

SHU is the licensee of several NCE stations in Connecticut and New York. SHU is one of nine applicants for a new FM channel in Rosendale, New York.

MMI and SHU face similar NCE licensing problems in each of their respective communities. Bloomfield, Indiana is located approximately 90 km from Indianapolis, where VHF TV Channel 6 station WRTV currently broadcasts. Similarly, Rosendale, New York is located approximately 90 km from Albany-Schenectady, where VHF TV Channel 6 station WRGB currently broadcasts. Although the Commission has reserved FM channels 200-220 for NCE licensees,⁴ the availability of these channels is restricted within areas served by VHF TV Channel 6.⁵ As a result, if the communities of Bloomfield and Rosendale are to have any NCE service at all, that NCE service must be licensed on a commercial channel, as permitted in the

³ NCE stations, also known as public broadcast stations, are defined in Section 397 of the Communications Act. NCE stations are eligible to be licensed by nonprofit corporations and other noncommercial entities which transmit noncommercial programming for educational purposes. 47 U.S.C. § 397(6).

⁴ 47 C.F.R. § 73.501.

⁵ See 47 C.F.R. § 73.525 (all NCE channels are restricted within 154 km of channel 6; some NCE channels are restricted as far as 265 km from channel 6).

Commission's Rules.⁶ Other situations of restricted NCE channel availability may occur in Mexican and Canadian border areas.⁷

I. The Commission Should Grant NCE Applicants Bidding Preferences In Auctions For Commercial Channels.

Since the Commission's Rules essentially *require* NCE applicants such as MMI and SHU to apply for commercial channels if they wish to provide NCE service to their respective communities, and Congress has directed the Commission to resolve all cases of mutual exclusivity over commercial channels through the use of auctions, the Commission should grant MMI and SHU, and any similarly situated NCE applicants, bidding preferences in any auctions to be held for the channels for which they have applied.

Both Congress and the Commission recognize that the financial limitations of NCE broadcasters and the strong public interest obligations they fulfill require that NCE applicants be afforded special financial treatment. In the Balanced Budget Act of 1997, which generally requires the Commission to use auctions in all cases of mutually exclusive applications, Congress specifically excluded NCE stations from the reach of the Commission's auction authority.⁸ The Commission currently waives filing fees for qualified NCE applicants.⁹ In each case, policymakers have recognized that NCE applicants are financially disadvantaged with respect to their commercial counterparts. NCE broadcasters, unlike commercial broadcasters, have no expectation that the initial capital expense of purchasing a license at auction can be

⁶ See 47 C.F.R. § 73.513.

⁷ E.g., 47 C.F.R. § 73.504.

⁸ Balanced Budget Act of 1997, § 3002(a), P.L. No. 105-33, 105th Cong., 1st Sess., 111 Stat. 251, 258, to be codified at 47 U.S.C. § 309(j)(2)(C).

⁹ See, e.g., 47 C.F.R. § 1.1114.

recovered through profits generated by commercial operation. As a result, auction fees will push start-up costs well beyond the reach of most NCE broadcasters, virtually guaranteeing that no NCE applicant can outbid competing commercial applicants for the channel.

Accordingly, if NCE broadcasting is to continue to be a viable service providing public benefits even in areas where NCE channels are unavailable, the Commission must give each NCE applicant a bidding preference in any auction in which it competes against commercial applicants. One form of bidding preference the Commission could grant is a percentage discount on each bid amount. For example, a NCE applicant who entered the winning bid for a commercial channel could be required to pay only a fixed percentage of its bid amount. MMI and SHU suggest that 50 percent may be a reasonable payment requirement. In addition, of course, the Commission must continue to grant NCE applicants fee waivers.

II. The Commission Should Consider Making a Preliminary Section 307(b) Determination as to the Need for NCE Use Versus Commercial Use of A Channel.

When both NCE and commercial applications have been filed for a channel, the Commission should consider the Section 307(b) need for NCE use of the channel prior to holding an auction.¹⁰ Recognizing that in certain communities any NCE service must be provided on commercial channels, as is the case in the communities for which MMI and SHU are applying, the Commission has the authority under Section 307(b) of the Communications Act to reserve particular commercial channels for NCE use and withhold them from the auction.¹¹

¹⁰ Section 307(b) obligates the Commission “to provide a fair, efficient, and equitable distribution of radio service” across the United States. 47 U.S.C. § 307(b).

¹¹ See Section 3002(a) of the Balanced Budget Act, 111 Stat. 258 (“The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission . . . for stations described in section 397(6) of this Act.”) Section 397(6) defines NCE stations by the characteristics of the entities by which the station is eligible to be licensed. 47 U.S.C. § 397(6).

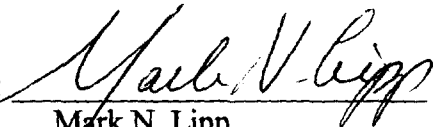
However, there may also be an overriding need for NCE use of a commercial channel even when such a reservation is not made, *e.g.*, in areas unserved or underserved by NCE stations (white or gray areas). Accordingly, the Commission should either make a preliminary finding under Section 307(b) that there is an overriding need for NCE use for a commercial channel and exempt the channel from the auction requirement, or accord a bidding preference or discount for NCE applicants filing for a commercial channel.

III. Conclusion

For the foregoing reasons, the Commission should take action consistent with the views expressed herein.

Respectfully submitted,

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